

Inhuman Sentencing of Children in Dominica

Briefing for the 33rd session of the Human Rights Council Universal Periodic Review in April 2019, submitted by the Child Rights International Network (www.crin.org), October 2018.

Inhuman sentencing of child offenders in Dominica

1. In Dominica, sentences of life imprisonment and corporal punishment are lawful for persons who were under the age of 18 at the time they committed a criminal offence.
2. The main laws governing juvenile justice are the Children and Young Persons Act 1970, the Magistrate's Code of Procedure Act 1961, the Juvenile Offenders' Punishment Act 1881, and the Corporal Punishment Act 1987.
3. The Corporal Punishment Act defines a child as under 16.¹ The Children and Young Persons Act (CYPA) defines a child as under 14, a juvenile as under 18, and a young person as aged 14 to 17. The CYPA also specifies the minimum age of criminal responsibility as 12.²

Legality of inhuman sentencing

Life imprisonment

4. People convicted of offences committed while they were under 18 may be sentenced to life imprisonment.
5. In prohibiting the death penalty for persons under 18, the Offences Against the Person Act requires that in lieu of the death penalty, children are sentenced to detention "during the State's pleasure".³ The Government has stated that it is possible for such persons to be sentenced to life imprisonment without the possibility of release.⁴ A child under 14 cannot be sentenced to prison, but 14 to 17 year-olds can.⁵

Corporal punishment

6. Corporal punishment is lawful as a criminal sentence for males.
7. High Court Judges are empowered to order that a boy under the age of 14 who has been convicted of an offence "be as soon as practicable privately whipped", in lieu of or in addition to any other punishment.⁶ The whipping consists of up to 12 strokes with a tamarind rod, in the presence of a police officer and, if desired, the boy's parent or guardian. A medical

¹ Corporal Punishment Act, Article 2.

² Articles 2 and 3. See also Cipriani, D. (2009), *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, Farnham: Ashgate Publishing Limited.

³ Offences Against the Person Act, Section 3(1)(b).

⁴ CRC/C/8/Add.48, 15 October 2003, Initial state report to the Committee on the Rights of the Child, para. 161.

⁵ Magistrate's Code of Procedure Act, Article 92; CRC/C/8/Add.48, 15 October 2003, Initial state party report to the Committee on the Rights of the Child, para. 70.

⁶ Juvenile Offenders' Punishment Act, Article 2.

practitioner should certify that the boy is fit to receive the punishment but this requirement can be dispensed with if no medical practitioner is available within 24 hours.⁷

8. A boy aged under 16 who has been convicted of any offence may be sentenced to corporal punishment in lieu of or in addition to any other punishment.⁸ If the sentence is passed in the Magistrate's Court, it must be confirmed in the High Court before being carried out.⁹ The High Court may pass a sentence of corporal punishment on any male convicted to rape, sexual intercourse with a girl under 14, or attempting or aiding these offences.¹⁰

9. The flogging should generally be carried out as soon as possible, up to 12 strokes on the buttocks for a boy under 16 or 24 strokes for older males. For those under 18, a tamarind rod must be used.¹¹ The flogging should be carried out in prison, though for boys under the age of 16, it can also be carried out in a police station. A medical officer must certify that the person is fit to undergo the punishment.¹²

10. The Children and Young Persons Act does not specifically mention corporal punishment as a way of dealing with juvenile offenders, but refers to the Magistrate's Code of Procedure Act, which allows a magistrate to order the "private whipping" of a male under 18.¹³ The Offences Against the Person Act also provides for "private whipping".¹⁴

Inhuman sentencing in practice

11. We have been unable to obtain statistical information relating to sentencing of children to life imprisonment, detention "during the State's pleasure" or corporal punishment.

The review of Dominica by the members of the Human Rights Council

12. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment for child offenders, and the specific recommendations made to Dominica by the Committee on the Rights of the Child to abolish sentences of life imprisonment and whipping,¹⁵ and during the first and second cycles of the Universal Periodic Review¹⁶ we urge members of the Human Rights Council to recommend that Dominica:

⁷ Juvenile Offenders' Punishment Act, Section 3.

⁸ The Corporal Punishment Act, Section 3.

⁹ The Corporal Punishment Act, Section 3.

¹⁰ The Corporal Punishment Act, Section 4 and 5.

¹¹ The Corporal Punishment Act, Section 7 and 8.

¹² The Corporal Punishment Act, Section 9.

¹³ Magistrate's Code of Procedure Act, Section 100; CRC/C/8/Add.48, 15 October 2003, Initial state party report to the Committee on the Rights of the Child, para. 160.

¹⁴ The Offences Against the Person Act, Section 71.

¹⁵ CRC/C/15/Add.238, Concluding Observations of the Committee on the Rights of the Child, 30 June 2004, paras. 28, 29, 46 and 47.

¹⁶ During the first cycle of the Universal Periodic Review, Slovenia, Chile and Italy made recommendations on the abolition of corporal punishment. During the second cycle, Germany made a recommendation on abolition life imprisonment for younger children, while Costa Rica, the Maldives and Germany made recommendations on the abolition of corporal punishment.

- Explicitly prohibit sentences of corporal punishment and life imprisonment for children in Dominica, without exception;
- Raise the minimum age of criminal responsibility.